

Union Calendar No. 416

110TH CONGRESS
2D SESSION

H. R. 4106

[Report No. 110-663]

To improve teleworking in executive agencies by developing a telework program that allows employees to telework at least 20 percent of the hours worked in every 2 administrative workweeks, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 7, 2007

Mr. DAVIS of Illinois (for himself, Mr. SARBANES, Mr. WAXMAN, Mr. TOM DAVIS of Virginia, Mr. WOLF, Mr. CUMMINGS, and Ms. NORTON) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

MAY 21, 2008

Additional sponsors: Mr. CLAY, Mr. LYNCH, and Mr. MORAN of Virginia

MAY 21, 2008

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on November 7, 2007]

A BILL

To improve teleworking in executive agencies by developing a telework program that allows employees to telework at least 20 percent of the hours worked in every 2 administrative workweeks, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Telework Improvements*
 5 *Act of 2008”.*

6 **SEC. 2. TELEWORKING.**

7 *(a) IN GENERAL.—Part III of title 5, United States*
 8 *Code, is amended by inserting after chapter 63 the fol-*
 9 *lowing:*

10 **“CHAPTER 65—TELEWORKING**

“Sec.

“6501. Definitions.

“6502. Governmentwide teleworking requirement.

“6503. Implementation.

“6504. Telework Managing Officer.

“6505. Annual telework agency rating.

“6506. Continuity of operations.

11 **“§ 6501. Definitions**

12 *“For purposes of this chapter—*

13 *“(1) the term ‘agency’ means an Executive agen-*
 14 *cy (as defined by section 105), except as provided in*
 15 *section 6506(c);*

16 *“(2) the term ‘telework’ or ‘teleworking’ refers to*
 17 *a work arrangement under which an employee regu-*
 18 *larly performs the duties and responsibilities of such*
 19 *employee’s position, and other authorized activities,*
 20 *from home or another worksite removed from the em-*
 21 *ployee’s regular place of employment;*

1 “(3) the term ‘continuity of operations’ refers to
 2 the preparations and institutions maintained by the
 3 Government to provide for the continuation of Gov-
 4 ernment operations in the event of a catastrophe; and

5 “(4) the term ‘catastrophe’ includes—

6 “(A) a national emergency declared by the
 7 President under the National Emergencies Act;

8 “(B) an emergency or major disaster de-
 9 clared by the President under the Robert T. Staf-
 10 ford Disaster Relief and Emergency Assistance
 11 Act; and

12 “(C) a public health emergency declared by
 13 the Secretary of Health and Human Services
 14 under section 319 of the Public Health Service
 15 Act.

16 **“§ 6502. Governmentwide teleworking requirement**

17 “(a) TELEWORKING REQUIREMENT.—

18 “(1) IN GENERAL.—Not later than 180 days
 19 after the date of the enactment of this chapter, the
 20 head of each agency shall establish a policy under
 21 which employees shall be authorized to telework, sub-
 22 ject to paragraph (2) and subsection (b).

23 “(2) REGULATIONS.—The policy of each agency
 24 under this subsection—

1 “(A) shall be in conformance with regula-
2 tions which the Administrator of General Serv-
3 ices shall, within 120 days after the date of the
4 enactment of this chapter and in coordination
5 with the Office of Personnel Management, pre-
6 scribe for purposes of this subsection; and

7 “(B) shall ensure that employees who are
8 authorized to telework will be allowed to do so—

9 “(i) to the maximum extent possible;
10 and

11 “(ii) without diminishing employee
12 performance or agency operations.

13 “(b) *TREATMENT OF CERTAIN CIRCUMSTANCES.*—
14 *Nothing in subsection (a) shall be considered—*

15 “(1) to require the head of an agency to author-
16 ize teleworking in the case of an employee whose du-
17 ties and responsibilities—

18 “(A) require daily access to classified infor-
19 mation;

20 “(B) require daily face-to-face contact with
21 members of the public or other persons, or the use
22 of equipment, at the employee’s regular place of
23 employment; or

1 “(C) are such that their performance from
2 a site removed from the employee’s regular place
3 of employment is not feasible; or

4 “(2) to prevent the temporary denial of permis-
5 sion for an employee to telework if, in the judgment
6 of the agency head—

7 “(A) the employee is needed to respond to
8 an emergency;

9 “(B) the employee requires additional train-
10 ing; or

11 “(C) the denial is necessary, for a specific
12 or ascertainable period of time, to achieve goals
13 and objectives of programs administered by the
14 agency.

15 “(c) *RULE OF CONSTRUCTION.*—Nothing in this chap-
16 ter shall—

17 “(1) be considered to require any employee to
18 telework; or

19 “(2) prevent an agency from permitting an em-
20 ployee to telework as part of a continuity of oper-
21 ations plan.

22 **“§ 6503. Implementation**

23 *“In order to carry out the purposes of this chapter—*

24 “(1) the head of each agency shall ensure that—

1 “(A) appropriate training is provided to
2 supervisors and managers and to all employees
3 who are authorized to telework; and

4 “(B) no distinction is made between tele-
5 workers and nonteleworkers for purposes of per-
6 formance appraisals;

7 “(2) the General Services Administration, in co-
8 ordination with the Office of Personnel Management,
9 shall provide advice, assistance, and, to the extent
10 necessary, training to agencies, including with respect
11 to—

12 “(A) questions of eligibility to telework, in-
13 cluding considerations relating to employee per-
14 formance; and

15 “(B) making teleworking part of the agen-
16 cy’s goals, including those of individual super-
17 visors and managers;

18 “(3) the General Services Administration, in co-
19 ordination with the Office of Management and Budget
20 and the National Institute of Standards and Tech-
21 nology, shall prescribe regulations, within 120 days
22 after the date of the enactment of this chapter, to en-
23 sure the adequacy of information and security protec-
24 tions for information and information systems used
25 in, or otherwise affected by, teleworking; such regula-

1 *tions shall be consistent with information security*
2 *policies and guidance issued by the Office of Manage-*
3 *ment and Budget and the National Institute of*
4 *Standards and Technology, and shall, at a minimum,*
5 *include requirements necessary—*

6 *“(A) to control access to agency information*
7 *and information systems;*

8 *“(B) to protect agency information (includ-*
9 *ing personally identifiable information) and in-*
10 *formation systems;*

11 *“(C) to limit the introduction of*
12 *vulnerabilities;*

13 *“(D) to protect information systems not*
14 *under the control of the agency that are used for*
15 *teleworking; and*

16 *“(E) to safeguard the use of wireless and*
17 *other telecommunications capabilities used for*
18 *telework purposes; and*

19 *“(4) the General Services Administration shall—*

20 *“(A) maintain a central, publicly available*
21 *telework website; and*

22 *“(B) include on that website any regula-*
23 *tions relating to teleworking and any other in-*
24 *formation the General Services Administration*
25 *considers appropriate.*

1 **“§ 6504. Telework Managing Officer**

2 “(a) *APPOINTMENT AND COMPENSATION.*—

3 “(1) *IN GENERAL.*—*There may be within each*
 4 *agency an officer to be known as the ‘Telework Man-*
 5 *aging Officer’. The Telework Managing Officer of an*
 6 *agency—*

7 “(A) *shall be appointed—*

8 “(i) *by the Chief Human Capital Offi-*
 9 *cer of such agency; or*

10 “(ii) *if none, by the head of such agen-*
 11 *cy; and*

12 “(B) *shall be compensated at a rate not less*
 13 *than the minimum rate of basic pay for grade*
 14 *GS–15 of the General Schedule.*

15 “(2) *WAIVER.*—*The Administrator of General*
 16 *Services may waive the minimum rate requirement*
 17 *under paragraph (1)(B) with respect to an agency if*
 18 *such agency has fewer than 100 employees (deter-*
 19 *mined on a full-time equivalent basis) and the head*
 20 *of such agency certifies that being required to comply*
 21 *with paragraph (1)(B) would adversely impact agen-*
 22 *cy operations.*

23 “(b) *LIMITATIONS.*—*An individual may not hold the*
 24 *position of Telework Managing Officer as a noncareer ap-*
 25 *pointee (as defined in section 3132(a)(7)), and such posi-*
 26 *tion may not be considered or determined to be of a con-*

1 *fidential, policy-determining, policy-making, or policy-ad-*
2 *vocating character.*

3 “(c) *DUTIES AND RESPONSIBILITIES.*—*The duties and*
4 *responsibilities of the Telework Managing Officer of an*
5 *agency shall be as follows:*

6 “(1) *Serving as—*

7 “(A) *an advisor on teleworking to the head*
8 *of such agency and to the Chief Human Capital*
9 *Officer of such agency (if any);*

10 “(B) *a resource on teleworking for super-*
11 *visors, managers, and employees of such agency;*
12 *and*

13 “(C) *the agency’s primary point of contact*
14 *on teleworking matters for employees of such*
15 *agency, Congress, and other agencies.*

16 “(2) *Ensuring that the agency’s teleworking pol-*
17 *icy is communicated effectively to employees.*

18 “(3) *Ensuring that electronic or written notifica-*
19 *tion is provided to each employee of specific telework*
20 *programs and the agency’s teleworking policy, includ-*
21 *ing authorization criteria and application proce-*
22 *dures.*

23 “(4) *Developing and administering a tracking*
24 *system for compliance with Governmentwide telework*
25 *reporting requirements.*

1 “(5) *Providing to the Comptroller General and*
2 *to the Administrator of General Services such infor-*
3 *mation as the Comptroller General may require to*
4 *prepare the annual reports under section 6505(b).*

5 “(6) *Establishing a system for receiving feedback*
6 *from agency employees on the agency’s teleworking*
7 *policy.*

8 “(7) *Developing and implementing a program to*
9 *identify and remove barriers to teleworking and to*
10 *maximize teleworking opportunities in the agency.*

11 “(8) *Ensuring that employees are notified of*
12 *grievance procedures available to them (if any) with*
13 *respect to any disputes that relate to teleworking.*

14 “(9) *Performing such other duties and respon-*
15 *sibilities relating to teleworking as the head of the*
16 *agency may require.*

17 “(d) *ALTERNATIVE TO TELEWORK MANAGING OFFI-*
18 *CER.—If no Telework Managing Officer is appointed under*
19 *subsection (a) with respect to an agency, the duties and re-*
20 *sponsibilities of a Telework Managing Officer shall be car-*
21 *ried out by the Chief Human Capital Officer of, or a career*
22 *employee in, such agency, as determined by the agency*
23 *head.*

1 **“§ 6505. Annual telework agency rating**

2 “(a) *IN GENERAL.*—*The Comptroller General shall es-*
3 *tablish a system for evaluating—*

4 “(1) *the teleworking policy of each agency; and*

5 “(2) *employee participation in telework pro-*
6 *grams at each agency.*

7 “(b) *ANNUAL REPORT.*—*The Comptroller General*
8 *shall, based on the system established under subsection (a),*
9 *submit an annual report to the Committee on Oversight and*
10 *Government Reform of the House of Representatives and the*
11 *Committee on Homeland Security and Governmental Af-*
12 *airs of the Senate. Each report under this subsection shall,*
13 *with respect to the period covered by such report—*

14 “(1) *evaluate the teleworking policy of each agen-*
15 *cy;*

16 “(2) *for each agency, indicate the total number*
17 *of employees in such agency and identify—*

18 “(A) *the number and percentage of employ-*
19 *ees who were eligible to telework;*

20 “(B) *the number and percentage of employ-*
21 *ees who teleworked an average of at least once a*
22 *week on a regular basis, determined based on*
23 *time spent actually teleworking;*

24 “(C) *the number and percentage of employ-*
25 *ees who teleworked an average of at least 20 per-*
26 *cent of the hours that they worked in every 2 ad-*

1 *ministrative workweeks, determined based on*
2 *time spent actually teleworking;*

3 *“(D) the number and percentage of employ-*
4 *ees who teleworked at least once a month on a*
5 *regular basis, determined based on time spent*
6 *actually teleworking;*

7 *“(E) the number and percentage of employ-*
8 *ees who were not authorized to telework and the*
9 *reasons why they were not so authorized;*

10 *“(F) the number and percentage of employ-*
11 *ees who were authorized to telework and then*
12 *later stopped teleworking, the reasons why those*
13 *employees stopped teleworking, and whether their*
14 *stopping was voluntary or due to other factors,*
15 *such as office coverage needs or productivity;*

16 *“(G) the extent to which barriers to maxi-*
17 *mizing teleworking opportunities have been iden-*
18 *tified and eliminated;*

19 *“(H) the impact (if any) of the agency’s*
20 *teleworking policy on the recruitment and reten-*
21 *tion of employees;*

22 *“(I) the impact (if any) of the agency’s tele-*
23 *working policy on the performance of agency em-*
24 *ployees; and*

1 “(J) the level of employee satisfaction with
 2 the agency’s teleworking policy, determined based
 3 on employee feedback;

4 “(3) evaluate the compliance of each agency with
 5 the requirements of this chapter; and

6 “(4) identify best practices in agency teleworking
 7 programs.

8 A report under this subsection shall be submitted for the
 9 year in which the regulations under section 6502(a)(2)(A)
 10 take effect and for each of the 4 succeeding years. Each such
 11 report shall be submitted within 6 months after the end of
 12 the year to which it relates.

13 “(c) *MINIMUM REQUIREMENT FOR COMPLIANCE.*—For
 14 purposes of subsection (b)(3), an agency shall not be consid-
 15 ered to be in compliance with the requirements of this chap-
 16 ter unless the employees of such agency who were authorized
 17 to telework were permitted to telework for at least 20 percent
 18 of the hours that they worked in every 2 administrative
 19 workweeks (disregarding any workweeks for which such em-
 20 ployees did not submit a request or for which they were
 21 otherwise ineligible to telework).

22 **“§ 6506. Continuity of operations**

23 “(a) *IN GENERAL.*—The head of each agency shall en-
 24 sure that—

1 “(1) to the maximum extent practicable, tele-
2 working is incorporated into the continuity of oper-
3 ations planning of such agency; and

4 “(2) mission critical personnel, as determined by
5 the head of such agency, are equipped to telework in
6 time of a catastrophe.

7 “(b) *COORDINATION RULE.*—The continuity of oper-
8 ations plan of an agency shall supersede any teleworking
9 policy of such agency to the extent that they are inconsistent
10 with one another.

11 “(c) *AGENCY DEFINED.*—For purposes of carrying out
12 subsection (a)(2), the term ‘agency’ means an agency named
13 in paragraph (1) or (2) of section 901(b) of title 31.”.

14 (b) *TECHNICAL AND CONFORMING AMENDMENTS.*—(1)
15 The analysis for part III of title 5, United States Code,
16 is amended by inserting after the item relating to chapter
17 63 the following:

“65. Teleworking 6501”.

18 (2) Section 622 of the Departments of Commerce, Jus-
19 tice, and State, the Judiciary, and Related Agencies Appro-
20 priations Act, 2005, as contained in the Consolidated Ap-
21 propriations Act, 2005 (5 U.S.C. 6120 note) is amended
22 by striking “designate a ‘Telework Coordinator’ to be” and
23 inserting “appoint or designate a Telework Managing Offi-
24 cer to be”.

4 “SUBCHAPTER II—CHIEF HUMAN CAPITAL
5 OFFICERS COUNCIL

7 “(a) *ESTABLISHMENT*.—There is established a Chief
8 *Human Capital Officers Council*, consisting of—

11 “(2) *the Deputy Director for Management of the*
12 *Office of Management and Budget, who shall act as*
13 *vice chairperson of the Council;*

15 “(4) the Chief Human Capital Officers of Execu-
16 tive departments and any other members who are des-
17 ignated by the Director of the Office of Personnel
18 Management.

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1 “(c) *EMPLOYEE LABOR ORGANIZATIONS AT MEET-*
 2 *INGS.—The Chief Human Capital Officers Council shall en-*
 3 *sure that representatives of Federal employee labor organi-*
 4 *zations are present at a minimum of 1 meeting of the Coun-*
 5 *cil each year. Such representatives shall not be members of*
 6 *the Council.*

7 “(d) *ANNUAL REPORT.—Each year, the Chief Human*
 8 *Capital Officers Council shall submit a report to Congress*
 9 *on the activities of the Council.”.*

10 (b) *TECHNICAL AND CONFORMING AMENDMENTS.—(1)*
 11 *Chapter 14 of title 5, United States Code, is amended by*
 12 *striking the matter before section 1401 and inserting the*
 13 *following:*

14 **“CHAPTER 14—CHIEF HUMAN CAPITAL**
 15 **OFFICERS**

 “SUBCHAPTER I—AGENCY CHIEF HUMAN CAPITAL OFFICERS

 “Sec.

 “1401. *Establishment of agency Chief Human Capital Officers.*

 “1402. *Authority and functions of agency Chief Human Capital Officers.*

 “SUBCHAPTER II—CHIEF HUMAN CAPITAL OFFICERS COUNCIL

 “1421. *Chief Human Capital Officers Council.*

16 “SUBCHAPTER I—AGENCY CHIEF HUMAN
 17 CAPITAL OFFICERS”.

18 (2) *The analysis for part II of title 5, United States*
 19 *Code, is amended by striking the item relating to chapter*
 20 *14 and inserting the following:*

“14. Chief Human Capital Officers 1401”.

1 (3) *Section 1303 of Public Law 107–296 (5 U.S.C.*
 2 *1401 note) is repealed.*

3 **SEC. 4. REPORTING REQUIREMENT.**

4 (a) *INCORPORATION OF TELEWORKING INTO CON-*
 5 *TINUITY OF OPERATIONS PLANNING.*—*Within 12 months*
 6 *after the effective date of the regulations under section*
 7 *6502(a)(2)(A) of title 5, United States Code (as amended*
 8 *by section 2), the General Services Administration, in co-*
 9 *ordination with the Office of Personnel Management, the*
 10 *Federal Emergency Management Agency, and the Chief*
 11 *Human Capital Officers Council, shall report to the appro-*
 12 *priate committees of Congress on the incorporation of tele-*
 13 *working into agencies’ continuity of operations planning,*
 14 *including—*

15 (1) *the extent to which such incorporation has*
 16 *occurred within each of the respective agencies;*

17 (2) *the extent to which each agency has con-*
 18 *ducted continuity of operations tests and exercises in-*
 19 *corporating teleworking for essential and non-essen-*
 20 *tial personnel;*

21 (3) *the extent to which agencies have used tele-*
 22 *working in response to emergencies; and*

23 (4) *any recommendations the General Services*
 24 *Administration considers appropriate.*

25 (b) *DEFINITIONS.*—*For purposes of this section—*

1 (1) *the term “appropriate committees of Con-*
2 *gress” means the Committee on Oversight and Gov-*
3 *ernment Reform of the House of Representatives and*
4 *the Committee on Homeland Security and Govern-*
5 *mental Affairs of the Senate;*

6 (2) *the terms “teleworking” and “continuity of*
7 *operations” have the meanings given those terms by*
8 *section 6501 of title 5, United States Code (as amend-*
9 *ed by section 2); and*

10 (3) *the term “agency” means an Executive agen-*
11 *cy (as defined by section 105 of title 5, United States*
12 *Code), excluding any having fewer than 100 employ-*
13 *ees (as defined by section 2105 of such title), deter-*
14 *mined on a full-time equivalent basis.*

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